In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 445

EDWARD MARTIN, ET AL., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioners filed in the Tax Court petitions for redetermination of income tax deficiencies and penalties assessed by the Commissioner (Pet. 44-45). The tax liabilities arose out of petitioners' transactions with two bankrupt firms (Pet. 2).

Rule 7(c) of the Rules of the Tax Court requires that the petition contain "[c]lear and concise * * * statements of the facts upon which the petitioner relies as sustaining the assignments of error." The Commissioner filed motions to dismiss on the ground that

the petitions did not comply with that rule (Pet. 56-58). The Tax Court held that the petitions did not comply, but gave petitioners several extensions of time to file amended petitions that would comply (Pet. 59, 69, 74, 75). The petitioners failed to do so, however, and approximately six months after its initial ruling the Tax Court dismissed the cases for failure to prosecute properly, and entered decisions in favor of the Commissioner for the amounts of taxes and penalties (Pet. 75-77).

Petitioners sought review in the Court of Appeals for the Seventh Circuit on a number of grounds, including the contentions that both the Tax Court itself and its rule are unconstitutional, that the petitions satisfied the rule, and that the Commissioner improperly had assessed deficiencies and penalties (Pet. 41-43, 78-90). The court of appeals rejected petitioners' constitutional arguments as without substance and, noting that the other issues were "substantially identical" to those in *Waldweiler* v. *Commissioner*, 351 F. 2d 587 (C.A. 7) (in which the court had upheld the Tax Court's dismissal in similar circumstances of petitions filed by other stockholders of the same corporations), affirmed the Tax Court's dismissals in the present case on the authority of that decision.

The decision of the court of appeals is correct, and there is no issue warranting further review. As the opinion of the court of appeals demonstrates, petitioners' constitutional attacks on the Tax Court are frivolous; and their other arguments involve only insubstantial claims of factual error in the particular

case. Petitioners' constitutional attacks on the income tax law, which they admittedly did not raise below (Pet. 6), are similarly without substance.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

SEPTEMBER 1966.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 230824 192